A

DATO' KADAR SHAH TUN SULAIMAN

v.

DATIN FAUZIAH HARON

B

HIGH COURT MALAYA, KUALA LUMPUR
HARMINDAR SINGH DHALIWAL JC
[CIVIL SUIT NO: S10(S3)-22-223-2004]
22 MAY 2009

C

TRUSTS: *Resulting trust - Monies deposited into defendant's account - Plaintiff and defendant husband and wife - Whether monies a gift by plaintiff for purchase and maintenance of a vehicle - Whether defendant holding sum of USD50,000 on trust for plaintiff - Monies meant as collateral for financing of vehicle - Whether plaintiff's prayer for refund of USD50,000 to be refused*

D

The plaintiff and the defendant were at all material times husband and wife but have since separated. Sometime in 1999, the plaintiff deposited a sum of USD50,000 into a time deposit account of the defendant in the Bank of Hawaii in the United States. In October
E 2003, the plaintiff instructed the defendant to transfer the said monies in the time deposit account to the plaintiff's and defendant's joint account at the Bank of Hawaii, United States which she refused to do. The defendant alleged that the said monies were a gift by the plaintiff for the purchase and maintenance
F of a Jaguar car. The plaintiff prayed for a declaration that the sum of USD50,000 was held on trust by the defendant for the plaintiff and sought for the return of the said monies.

Held:

G **(1)** The Jaguar was a gift from the plaintiff to the defendant. It was registered in her name and it had the defendant's nickname 'GEE' as the personalised registration number of the car. However, the USD50,000 was not a gift as the defendant contended. It was meant as collateral for the financing of the
H car. If the instalments were not paid, this USD50,000 would be used by the Bank of Hawaii as payment. But as long as the instalments were being paid, the intention clearly was that the money was to be returned to the plaintiff. (paras 7 & 8)

(2) Given the state of affairs, the defendant was holding the sum
I of USD50,000 on trust for the plaintiff. However, as the USD50,000 was meant as collateral for the financing of the car which was a gift from the plaintiff to the defendant and which

sum was in the end utilized to pay for the car, the prayer for the refund of the USD50,000 was refused. The plaintiff had lost nothing in that instead of the instalment payments coming from him from another account, the USD50,000 collateral was used to pay the same. (para 13)

[Order accordingly.]

Case(s) referred to:
Lew Pa Leong v. Chi Shen Lan [2007] 1 CLJ 603 CA ***(refd)***
Liew Choy Hung v. Fork Kian Seng [2000] 1 CLJ 369 HC ***(refd)***
Neo Tai Kim v. Foo Stie Wah [1980-1981] SCR 215 ***(refd)***
Tinker v. Tinker [1970] 2 WLR 508 ***(refd)***

For the plaintiff - Vana Vadiveloo (Basil Douglas Anthony with her); M/s Kumar Jaspal Quah & Aishah
For the defendant - Ken St James (Wang Siew Yong with him); M/s Michael Chai & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Harmindar Singh Dhaliwal JC:

[1] The plaintiff and the defendant were at all relevant times husband and wife. They have since separated. Sometime in 1999, the plaintiff deposited a sum of USD50,000 into a time deposit account of the defendant in the Bank of Hawaii in the United States. The account number was 0000293712. Later in October 2003, the plaintiff instructed the defendant to transfer the said monies in the time deposit account to the plaintiff's and defendant's joint account at the Bank of Hawaii, United States. She refused to do so. She alleged that the said monies were a gift by the plaintiff for the purchase and maintenance of a Jaguar car. The plaintiff now prays for a declaration that the sum of USD50,000, which was actually USD52,755.45, was held on trust by the defendant for the plaintiff. He seeks for the return of the said monies.

[2] The personal feud between the plaintiff and the defendant was no doubt ignited by some serious disagreements. But it also raises an important question of law as to when can a person be regarded to be holding money given or property transferred to him or her as holding such on trust and not beneficially. So what is the law in

this regard? The cases of *Lew Pa Leong v. Chi Shen Lan* [2007] 1 CLJ 603; *Neo Tai Kim v. Foo Stie Wah* [1980-1981] SCR 215; *Tinker v. Tinker* [1970] 2 WLR 508 and *Liew Choy Hung v. Fork Kian Seng* [2000] 1 CLJ 369 are instructive.

[3] What can be gathered from these cases is this. If A purchases property and pays for it with his own money but puts it in the name of B (or A puts his money in the name of B), there is a resulting trust in favour of A. This means that A retains the beneficial interest of the property or money as the case may be. This can of course be rebutted if it can be shown that at the time of purchase (or at the time the money was given), there existed a common intention between A and B that the beneficial interest in the property or money was to be for B. In other words, A had intended that B was to take the property or money beneficially.

[4] This presumption of resulting trust can also be negated by the doctrine of the presumption of advancement. This means that the resulting trust would not arise if B was A's wife or child or someone to whom A stands in *loco parentis*. The presumption of advancement arises because of the relationship of the parties. So in this example, B would be the beneficial owner of the property or money.

[5] However, this presumption of advancement can also be rebutted if A (the husband) can show that, at the time of the transaction, there was between A (the husband) and B (the wife or child) a common intention that it was to be otherwise. The onus to show this would be on A.

[6] In the instant case, the evidence disclosed that the plaintiff had purchased the Jaguar car for about USD82,000. An advance of USD30,000 was paid. The balance of about USD50,000 was to be financed by the Bank of Hawaii. The car was to be registered in the name of the defendant. Being a foreigner, she could not directly or formally get financing. The bank advised the defendant to open a separate time deposit account in the bank as collateral for the monthly installment repayments of the loan. The plaintiff then deposited a sum of USD52,755.45 into the time deposit account in the Bank of Hawaii. It should be noted, and the significance of which would become apparent later, that the monthly installments of USD1,142 came from another account at the Bank of Hawaii. The USD52,755.45 remained untouched. The Bank of Hawaii could have recourse to it in the event the installments were not paid.

[7] The first question that requires an answer is this. Was the Jaguar car a gift from the plaintiff to the defendant? The answer I think is plain enough. The car was registered in her name. It had the defendant's nick-name "GEE" as the personalised registration number of the car. It was not disputed that the plaintiff was not averse to giving the defendant generous gifts in the form of expensive diamonds or jewellery. As the son of the plaintiff and defendant (SP2) testified, this car was known as his mother's car. It was not the family car. The plaintiff and the children had their own cars. The plaintiff is certainly not asking for the return of the Jaguar car and rightly so. It was because it was a gift.

[8] But more importantly, was the USD50,000 also a gift as the defendant is now contending? I do not think it was. It was meant as collateral for the financing of the car. Of course if the installments were not paid, this USD50,000 would then be used by the Bank of Hawaii as payment. But as long as the installments were being paid, this money was not to be touched. In the event that all the installments were paid, the intention clearly was that the money was to be returned to the plaintiff. The purpose of this USD50,000 was specific. It was provided solely and purely as collateral for the loan. As much as the defendant wanted to think that this USD50,000 was also a gift just like the Jaguar car, this was certainly not the case as borne out by the evidence adduced at the trial.

[9] In coming to this view, I have not overlooked the fact that the defendant had looked after the plaintiff when he had a heart attack in 1998. It was submitted that both the car and the money were gifts because the plaintiff was indebted to the defendant. I have no doubt that the defendant's conduct in this regard was highly admirable. But then, the car was only purchased in September 2001, well after the plaintiff's medical difficulties were resolved. Even if it were the case as the defendant contends, the purchase of the car as a gift could be understandable but not the USD50,000 collateral as well. For these reasons, I was not persuaded by this argument.

[10] So should this then be the end of the matter? I'm afraid it is not. The defendant testified that in August 2003, she used the monies in the time deposit account to pay for the car. After she had utilized the monies for this purpose, there was only a few thousand dollars left.

[11] Could this possibly be true? When the plaintiff was asked about this during cross-examination, he replied that he did not know if the car was fully paid up. He also said that he did not know if in August 2003, the defendant fully paid off the loan for the car. It was also never suggested to the defendant during cross-examination that she did not pay off for the car in 2003 using the monies in the time deposit account. Instead, what was suggested was that she made the payments on her own accord to which she replied that it was to pay for the car.

[12] It was also not disputed that the monthly installments for the repayment of the Jaguar car was USD1142.27. Since the loan was for the sum of about USD50,000, it would have taken the plaintiff at least five years before the loan was cleared. Considering these circumstances, I accepted the testimony of the defendant to be a candid account of how the monies in the time deposit account were used to repay the outstanding loan for the car.

[13] Given this state of affairs, is the plaintiff entitled to the relief he is seeking? For the reasons that I have stated earlier, the defendant was indeed holding the sum of USD50,000 on trust for the plaintiff. The plaintiff is therefore entitled to the declaration as sought in prayer (i). However, as the USD50,000 was meant as collateral for the financing of the car which was a gift from the plaintiff to the defendant and which sum was in the end utilized to pay for the car, the prayer for the refund of the USD50,000 is refused. In the final analysis, the plaintiff has lost nothing in that instead of the installment payments coming from him from another account, the USD50,000 collateral was used to pay the same.

[14] Since the plaintiff has failed to get the refund of the USD50,000 which was really the whole purpose of this action, the defendant is entitled to costs, which if not agreed, should be taxed.